

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES W. HECKMAN,  
Plaintiff,

v.

DEPARTMENT OF THE INTERIOR DIRK  
KEMPTHORNE, SECRETARY, et al  
Defendants.

Case No. C08-5239RBL

ORDER GRANTING PLAINTIFF TO  
PROCEED *IN FORMA PAUPERIS*

THIS MATTER comes before this Court upon Plaintiff's Application to Proceed *In Forma Pauperis*.

The Court has broad discretion in determining an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9<sup>th</sup> Cir. 1963), *cert. denied* 375 U.S. 845 (1963). As of the date of the application, plaintiff lists no assets and indicates that he has not been employed since 1999 but that he has received income from social security and a disability pension from the VA. However, plaintiff's listed debts exceed his income. It thus appears that plaintiff is unable to pay the filing fee in this case; therefore, the application to proceed *in forma pauperis* is **GRANTED**. The Clerk shall file plaintiff's complaint.

The Clerk shall send service forms to the plaintiff. **The plaintiff shall return the service forms and the correct number of service copies of his complaint to serve each named defendant within 30 days of entry of this Order. The service forms must be completely and accurately filled out. The failure to return to the Clerk the service forms and service copies of the complaint within 30 days of**

1 **entry of this Order will result in the dismissal of plaintiff's complaint.**

2 If the plaintiff returns the service forms and service copies of his complaint, the Clerk is directed to  
3 effect service as provided below:

4 (1) Service by United States Marshal.

5 It is hereby ORDERED that the United States Marshal shall send the following to each named  
6 defendant for whom there is a filled out service form by first class mail: a copy of the complaint and of this  
7 Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of  
8 Service of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. All costs of  
9 service shall be advanced by the United States. The Clerk shall assemble the necessary documents to effect  
10 service.

11 (2) Response Required

12 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service of  
13 Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after the date  
14 designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the complaint, as  
15 permitted by Rule 12 of the Federal Rules of Civil Procedure.

16 Any defendant who fails to timely return the signed Waiver will be personally served with a  
17 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule  
18 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under Rule  
19 12 within **thirty (30) days** after service.

20 (3) Filing and Service by Parties, Generally.

21 All original documents and papers submitted for consideration by the court in this case, are to be  
22 filed with the Clerk of this court. The originals of all such papers shall indicate in the upper right-hand  
23 corner the name of the Judge to whom the copies are to be delivered. The papers shall be accompanied by  
24 proof that such documents have been served upon counsel for the opposing party (or upon any party acting  
25 *pro se*). The proof shall show the day and manner of service and may be by written acknowledgment of  
26 service, by certificate of a member of the bar of this court, or by affidavit of the person who served the  
27 papers.  
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1           (4)    Motions.

2           Any request for court action shall be set forth in a motion, properly filed and served. The motion  
3 shall include in its caption (immediately below the title of the motion) a designation of the Friday upon  
4 which the motion is to be noted upon the court's calendar. That date shall be the third Friday following  
5 filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs and affidavits in  
6 opposition to any motion shall be filed and served not later than 4:30 p.m. on the Monday immediately  
7 preceding the Friday appointed for consideration of the motion. If a party fails to file and serve timely  
8 opposition to a motion, the court may deem any opposition to be without merit. The party making the  
9 motion may file, not later than 4:30 p.m. on the Friday designated for consideration of the motion, a  
10 response to the opposing party's briefs and affidavits.

11           (5) Motions for Summary Judgment

12           If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil  
13 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a nonmoving  
14 party to submit affidavits or other evidence in opposition to a motion for summary judgment if the moving  
15 party has shown the absence of issues of material fact and an entitlement to judgment as a matter of law. A  
16 nonmoving party may not rest upon the mere allegations or denials of prior pleadings. Rather, successful  
17 opposition to a motion for summary judgment requires the nonmoving party to set forth, through affidavits  
18 or other evidence, specific facts showing a genuine issue for trial. Failure by the nonmoving party to  
19 oppose a summary judgment motion or to present counter evidence could result in the Court accepting the  
20 moving party's evidence as the truth, and entering final judgment in favor of the moving party without a  
21 full trial. Rand v. Rowland, 113 F.3d 1520 (9<sup>th</sup> Cir. 1997).

22           (6)    Direct Communications with District Judge or Magistrate Judge

23           No direct communication is to take place with the District Judge or Magistrate Judge with regard  
24 to this case. All relevant information and papers are to be directed to the Clerk.  
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1 (7) Clerk's Action

2 The Clerk is directed to send a copy of this Order to the plaintiff.

3 DATED this 7<sup>th</sup> day of May, 2008.

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7 RONALD B. LEIGHTON  
8 UNITED STATES DISTRICT JUDGE  
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